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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/894,806	06/28/2001	Alan L. Greener	25436/1712	4116
27495	7590	11/28/2003	EXAMINER	
PALMER & DODGE, LLP KATHLEEN M. WILLIAMS / STR 111 HUNTINGTON AVENUE BOSTON, MA 02199			MARVICH, MARIA	
			ART UNIT	PAPER NUMBER
			1636	

DATE MAILED: 11/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/894,806

Applicant(s)

GREENER ET AL.

Examiner

Maria B Marvich, PhD

Art Unit

1636

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 05 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 05 November 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 47-62 and 64-77.

Claim(s) objected to: 2-21, 23-27, 29-46 and 78-80.

Claim(s) rejected: 1, 22, 28, 63, 81 and 82.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

*Gerald G. Helff*  
**GERRY LEFFERS**  
**PRIMARY EXAMINER**

Continuation of 2. NOTE: The claims if amended as proposed in the amendment filed 9/2/2003, raises issues of new matter. Claim 1 recites that the cells are not frozen at the time of drying. The limitation that the cells are not frozen at the time of drying finds no support in the specification as filed. The specification discloses on page 13, line 20-21 that "the cells are not frozen immediately prior to drying (i.e., at least 1 minute prior to drying" and on line 33 that "The cells themselves are never freeze-dried". Applicants cite the later as evidence that the amendment finds support in the specification. However, the cited phrase is describing use of a freeze-drying apparatus for "the process (e.g. by not drying in the presence of dry-ice, or by setting a temperature control to a temperature above freezing, i.e. such as room temperature. The cells themselves are never freeze-dried." This section is not used to describe the state of the cells upon drying. Furthermore, the amendment changes the scope of the claims and as such raises new issues requiring further consideration and a prior art search. .

Continuation of 5. does NOT place the application in condition for allowance because: does NOT place the application in condition for allowance because: the rejections are maintained for reasons of record in view of the non-entry of the proposed amendment. All of the applicant's arguments are directed to the claims as amended by the proposed amendment and thus are moot due to the non-entry of the proposed amendment . .